



Billing Code 3410-KS-P

DEPARTMENT OF AGRICULTURE

2 CFR Part 417

Federal Crop Insurance Corporation

7 CFR Part 400

0505-AA17

Nonprocurement Debarment and Suspension

AGENCY: Office of the Chief Financial Officer and Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The USDA issues this final rule to adopt certain provisions of the Office of Management and Budget (OMB) guidelines to agencies on governmentwide debarment and suspension (nonprocurement) not previously adopted, to adopt changes made to the OMB guidance after its initial publication in 2010, and to revise the definition of the term “disqualified” to add the statutory disqualification requirements for USDA agencies. Finally, this rule removes a reference to the old USDA suspension and debarment regulations for the Federal Crop Insurance Corporation and replaces it with the current regulations. This regulatory action makes no substantive changes in USDA policy or procedures for nonprocurement debarment and suspension.

DATES: This final rule is effective as of [**insert date of publication in the *FEDERAL REGISTER***].

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SUPPLEMENTARY INFORMATION:

Background

USDA published a direct final rule on May 25, 2010, to adopt the OMB guidelines to agencies on nonprocurement debarment and suspension as 2 CFR part 417 (75 FR 29183). USDA issues this final rule to adopt subpart E, General Services Administration's System for Award Management (GSA/SAM) (formerly Excluded Parties List System) and subpart F, General Principles Relating to Suspension and Debarment, of 2 CFR part 180. It also revises 2 CFR part 417 to amend subpart I to add the definition of "disqualified" in 2 CFR 417.935, as supplemented to include the statutory disqualifications required under USDA programs, and the definition of "nonprocurement transaction" in 2 CFR 417.970, and to adopt the Appendix to Part 180 – Covered Transactions. Finally, this rule amends 7 CFR part 400 to replace a reference to the old USDA suspension and debarment regulations in 7 CFR 400.454.

Discussion and Analysis

The amendment to part 417 adopts subparts and definitions in the OMB guidelines to agencies on nonprocurement debarment and suspension not previously adopted and captures updates to 2 CFR part 180 that have occurred since 2010. These

include Subpart E, General Services Administration’s System for Award Management (GSA/SAM) (formerly Excluded Parties List System); Subpart F, General Principles Relating to Suspension and Debarment; definitions added in 2 CFR 180.935, as supplemented to include USDA statutory disqualifications, and 2 CFR 180.970; and Appendix to Part 180 – Covered Transactions. This rule also replaces a reference to 7 CFR part 3017 in 7 CFR 400.454 with a reference to 2 CFR part 417. This regulatory action is a technical update of the rule and does not represent a change in current USDA nonprocurement debarment and suspension policy or procedures.

Executive Order 12866 Regulatory Planning and Review

This rule is issued in conformance with Executive Order 12866, “Regulatory Planning and Review.” It has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

IV. Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b))

This regulatory action will not have a significant, adverse impact on a substantial number of small entities.

V. Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

VI. Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

VII. Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. This rule does not impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

VIII. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled “Consultation and Coordination With Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires agencies to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as specified in Executive Order 13175.

List of Subjects

2 CFR part 417

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

7 CFR part 400

Acreage allotments, Administrative practice and procedure, Claims, Crop insurance, Drug traffic control, Fraud, Government employees, Income taxes, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Wages.

For the reasons discussed in the preamble, the Department of Agriculture amends 2 CFR part 417 and 7 CFR part 400 as follows:

Title 2 – Grants and Agreements

Chapter IV - Department of Agriculture

PART 417—NONPROCUREMENT DEBARMENT AND SUSPENSION

1. The authority citation for part 417 continues to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 101–576, 104 Stat. 2838; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 7 U.S.C. 2209j; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, Comp., p. 235); 7 CFR 2.28.

2. Add subpart E, consisting of §§ 417.500 through 417.530, to read as follows:

Subpart E—System for Award Management Exclusions

Sec.

417.500 What is the purpose of the System for Award Management Exclusions (SAM Exclusions)?

417.505 Who uses SAM Exclusions?

417.510 Who maintains SAM Exclusions?

417.515 What specific information is in SAM Exclusions?

417.520 Who places the information into SAM Exclusions?

417.525 Whom do I ask if I have questions about a person in SAM Exclusions?

417.530 Where can I find SAM Exclusions?

Subpart E—System for Award Management Exclusions

§ 417.500 What is the purpose of the System for Award Management Exclusions

(SAM Exclusions)?

SAM Exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 417.505 Who uses SAM Exclusions?

(a) Federal agency officials use SAM Exclusions to determine whether to enter into a transaction with a person, as required under § 180.430 of this title.

(b) Participants also may, but are not required to, use SAM Exclusions to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § 180.320 of this title; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) SAM Exclusions are available to the general public.

§ 417.510 Who maintains SAM Exclusions?

The General Services Administration (GSA) maintains SAM Exclusions. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into SAM Exclusions.

§ 417.515 What specific information is in SAM Exclusions?

(a) At a minimum, SAM Exclusions indicates—

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The unique entity identifier approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for SAM Exclusions includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 417.520 Who places the information into SAM Exclusions?

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into SAM Exclusions:

(a) Information required by § 180.515(a) of this title;

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person, within three business days, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ 417.525 Whom do I ask if I have questions about a person in SAM Exclusions?

If you have questions about a listed person in SAM Exclusions, ask the point of contact for the Federal agency that placed the person's name into SAM Exclusions. You may find the agency point of contact from SAM Exclusions.

§ 417.530 Where can I find SAM Exclusions?

You may access SAM Exclusions through the Internet, currently at <https://www.sam.gov>.

3. Add subpart F, consisting of §§ 417.600 through 417.660, to read as follows:

Subpart F—General Principles Relating to Suspension and Debarment Actions

Sec.

417.600 How do suspension and debarment actions start?

417.605 How does suspension differ from debarment?

417.610 What procedures does a Federal agency use in suspension and debarment actions?

417.615 How does a Federal agency notify a person of a suspension or debarment action?

417.620 Do Federal agencies coordinate suspension and debarment actions?

417.625 What is the scope of a suspension or debarment?

417.630 May a Federal agency impute the conduct of one person to another?

417.635 May a Federal agency settle a debarment or suspension action?

417.640 May a settlement include a voluntary exclusion?

417.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

417.650 May an administrative agreement be the result of a settlement?

417.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?

417.660 Will administrative agreement information about me in the designated integrity and performance system accessible through SAM be corrected or updated?

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 417.600 How do suspension and debarment actions start?

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it and the agency will investigate. The officials refer the question of whether to suspend or debar you to their suspending or debarring official for consideration, if appropriate.

§ 417.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official. . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—	
(1) Have “adequate evidence” that there may be a cause for debarment of a	

person; and	
(2) Conclude that “immediate action ” is necessary to protect the Federal interest	Must conclude, based on a “preponderance of the evidence,” that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension “first,” and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted	Imposes debarment “after” giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 417.610 What procedures does a Federal agency use in suspension and debarment actions?

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and subpart G of this part.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and subpart H of this part.

§ 417.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of—

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 417.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 417.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ 417.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director,

shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) Conduct imputed from an organization to an individual, or between individuals. A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) Conduct imputed from one organization to another organization. A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control, or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

§ 417.635 May a Federal agency settle a debarment or suspension action?

Yes, a Federal agency may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 417.640 May a settlement include a voluntary exclusion?

Yes, if a Federal agency enters into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 417.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

(a) Yes, the Federal agency agreeing to the voluntary exclusion enters information about it into SAM Exclusions.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

§ 417.650 May an administrative agreement be the result of a settlement?

Yes, a Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

§ 417.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement to the designated integrity and performance system within three business days after entering into the agreement. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

§ 417.660 Will administrative agreement information about me in the designated integrity and performance system accessible through SAM be corrected or updated?

Yes, the suspending or debarring official who entered information into the designated integrity and performance system about an administrative agreement with you:

(a) Must correct the information within three business days if he or she subsequently learns that any of the information is erroneous.

(b) Must correct in the designated integrity and performance system, within three business days, the ending date of the period during which the agreement is in effect, if the agreement is amended to extend that period.

(c) Must report to the designated integrity and performance system, within three business days, any other modification to the administrative agreement.

(d) Is strongly encouraged to amend the information in the designated integrity and performance system in a timely way to incorporate any update that he or she obtains that could be helpful to Federal awarding agencies who must use the system.

Subpart I – Definitions

4. Add § 417.935 to read as follows:

§ 417.935 Disqualified (USDA supplement to governmentwide definition at 2 CFR 180.935).

“Disqualified” means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority.

Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799);

(d) 515(h) of the Federal Crop Insurance Act (7 U.S.C. 1515(h));

(e) Section 12 of the Food and Nutrition Act of 2008 (7 U.S.C. 2021).

5. Add § 417.970 to read as follows:

§ 417.970 Nonprocurement transaction.

(a) “Nonprocurement transaction” means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

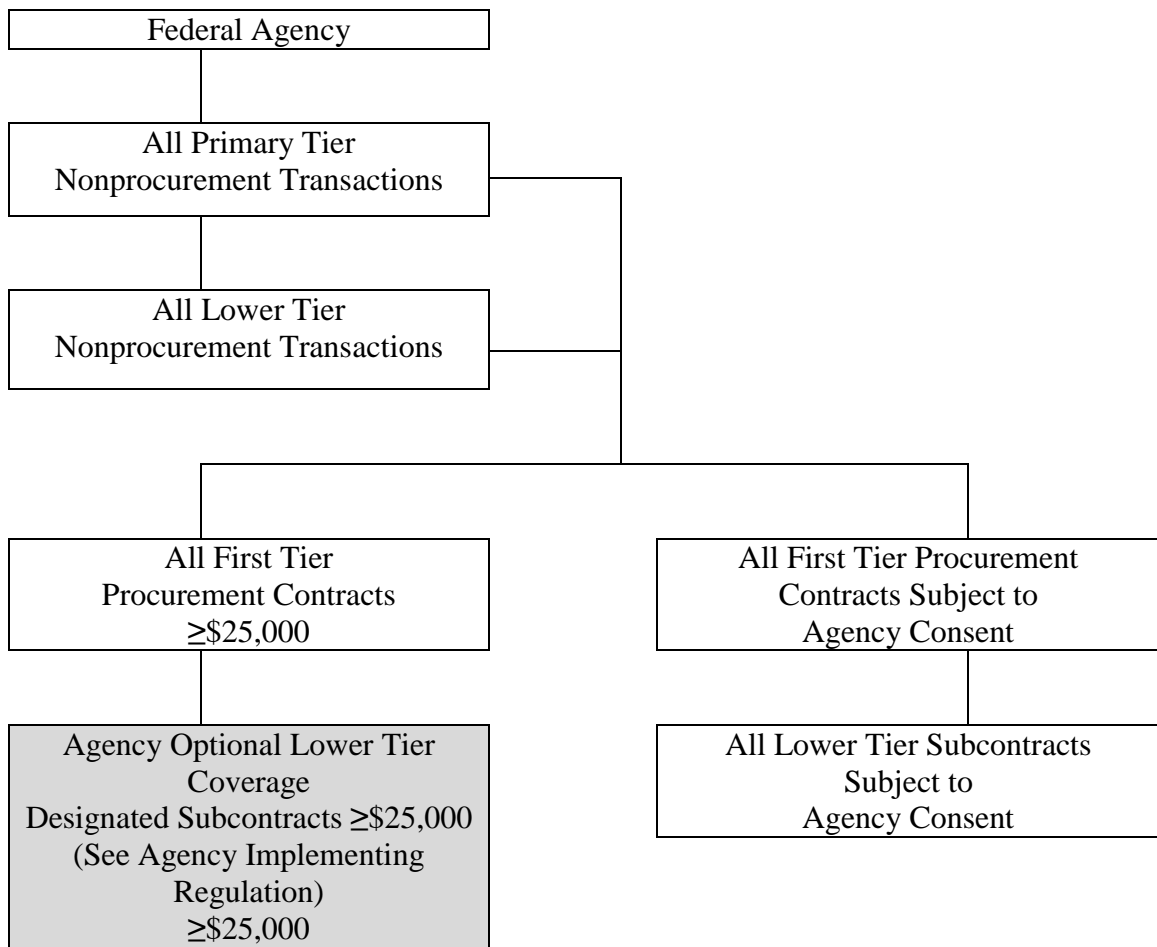
- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.
- (9) Insurances.
- (10) Payments for specified uses.
- (11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

6. Add Appendix 1 to Part 417 to read as follows:

Appendix 1 to Part 417—Covered Transactions

Covered Transactions



Title 7

Chapter IV - Federal Crop Insurance Corporation

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart R—Administrative Remedies for Non-compliance

6. The authority citation for 7 CFR part 400, subpart R, continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o), and 7 U.S.C. 1515(h).

§ 400.454 [Amended]

7. In § 400.454(e)(3), remove the phrase “Excluded Parties List System (EPLS) in accordance with 7 CFR part 3017, subpart E” and add in its place “System for Award Management (SAM) in accordance with 2 CFR part 417”.

Stephen L. Censky
Deputy Secretary

[FR Doc. 2019-20865 Filed: 10/3/2019 8:45 am; Publication Date: 10/4/2019]